FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM 1943

No. 352

UNIVERSAL OIL PRODUCTS COMPANY,
a corporation,

Petitioner,

v.

GLOBE OIL & REFINING COMPANY,
a corporation,

Respondent.

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ALEXANDER F. REICHMANN,
WILLIAM F. HALL,
CHARLES M. THOMAS,
RALPH S. HARRIS,
WALTER J. BLENKO,
Attorneys for Petitioner.

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Reference is made, in the "Brief for Respondent in Opposition to Petition for Writ of Certiorari" (p. 2-3) and in the supporting affidavit of J. Bernhard Thiess, Esq., thereto annexed (p. 25-7), to the appointment, by the Circuit Court of Appeals for the Third Circuit, of Thomas Raeburn White, Esq., as Master to investigate and report whether the decree in the *Root* case was invalid by reason of fraud, corruption, obstruction or distortion of justice. The facts relating to the institution of the investigation are therein sufficiently set forth.

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As appears from the annexed affidavit of Ralph S. Harris, verified October 21, 1943, counsel for Petitioner have just received a copy of the report of Mr. White, filed in the office of the Clerk of the United States Circuit Court of Appeals for the Third Circuit on October 19, 1943, wherein he states his conclusion as follows:

> "Upon the whole record I am forced to the conclusion that there was in connection with this case such fraud as tainted and invalidated the judgments rendered by this court therein on June 26, 1935."

Petitioner, deeming itself aggrieved and its property and reputation unjustly and unlawfully jeopardized and impugned by the said report of Mr. White, intends promptly to file appropriate exceptions or objections thereto and to prosecute the same to the end that the findings and conclusions, inimical to Petitioner's rights and, as it submits, to the evidence, shall be reviewed and reversed.

Respondent suggests in its Brief (p. 3) that:

> "* * * this Court may, if it sees fit, postpone action on the petition until such time as the Court of Appeals for the Third Circuit shall have reached a decision as to whether there is an existing valid decree of that court in the *Root* case * * *."

Since Mr. White was appointed merely to hear and report and since his report is subject to confirmation or rejection by the Circuit Court of Appeals, we respectfully submit that no cognizance thereof should be taken by this Court, at least at this time.

Even if the Court should determine to take cognizance of the report, at this time, it should, we respectfully submit,

grant the writ and postpone the hearing on the merits and possibly the filing of briefs until such time as it shall fix. To deny the writ upon the theory that the existing conflict between the circuits has been eliminated by Mr. White's report would, in effect, give to that report the force of a judgment of a court of competent jurisdiction and would be tantamount to setting aside the existing judgment prior to a final determination of the issues involved in that proceeding.

We respectfully submit, therefore, that unless and until the judgment of the Circuit Court of Appeals in the *Root* case shall have been set aside, if that event shall ever occur, a clear conflict, as set forth in the Petition, exists between the circuits and the writ of certiorari should be granted.

Respectfully submitted,

ALEXANDER F. REICHMANN,
WILLIAM F. HALL,
CHARLES M. THOMAS,
RALPH S. HARRIS,
WALTER J. BLENKO,
Attorneys for Petitioner.

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AFFIDAVIT OF RALPH S. HARRIS

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

RALPH S. HARRIS, being duly sworn, deposes and says:

That he is a citizen of the United States and one of the counsel for the petitioner herein.

That counsel for petitioner received on October 20, 1943, a copy of the report of Thomas Raeburn White, Esq., Master, which was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Third Circuit on October 19, 1943.

In his report Mr. White states his conclusion as follows:

> "Upon the whole record I am forced to the conclusion that there was in connection with this case such fraud as tainted and invalidated the judgments rendered by this court therein on June 26, 1935."

RALPH S. HARRIS

Sworn to before me this
21st day of October, 1943.

GEORGE W. HANCOCK
Notary Public, New York County
N. Y. Co. Clk's No. 51 Reg. No. 355-H-5
Certificates filed in
Kings Co. Clk's No. 60 Reg. No. 203-H-5
Bronx Co. Clk's No. 59 Reg. No. 188-H-5
Queens Co. Clk's No. 2228 Reg. No. 285-H-5
Richmond County
Westchester County
Commission expires March 30, 1945